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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,141	08/23/2001	Steven Phillip Gologoraky	620-020us	1711

22897 7590 04/16/2007  
DEMONT & BREYER, LLC  
100 COMMONS WAY  
HOLMDEL, NJ 07733

EXAMINER
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LIVERSEDGE, JENNIFER L

ART UNIT	PAPER NUMBER
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3692

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/16/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/938,141	GOLOGORAKY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jennifer Liversedge	3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

This Office Action is responsive to Applicant's amendment and request for reconsideration of application 09/938,141 filed on February 14, 2007.

The amendment contains original claims: 1-16.

### ***Claim Objections***

Claim 7 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Examiner believes that applicant intends claim 7 to depend from independent claim 6.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 recites the limitation "at said data processing system" in the second line of the claim. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,871,191 B1 to Kinney, Jr. et al. (further referred to as Kinney), and further in view of "The Complete Idiot's Guide to Online Auctions" by Michael Miller (further referred to as Miller).

Regarding claims 1-7, Kinney discloses a method of conducting an auction (columns 1-14), the method comprising:

Entering, at a data processing system, a first bid into said auction in behalf of a first bidder (Figures 1, 5A-5B, );

Receiving, at said data processing system, a bid package from a second bidder, wherein said bid package directs said data processing system to determine bid

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variables based on parameters of the first bidder (Figures 1, 5A-5B, 7; column 4, lines 37-45; column 12, lines 38-67; columns 13-14);

Entering, at said data processing system, a second bid into said auction in behalf of said second bidder, wherein said second bid comprises said bid variable as determined by said data processing system (Figure 7; column 4, lines 37-45; column 12, lines 38-67);

Withholding, at said data processing system, the identity of said first bidder from said second bidder until at least after said bid package has been received at said data processing system (column 13, lines 42-67);

Where second bid variables are set to values equal to, less than, and greater than first bid variables (column 11, lines 30-32; column 12, lines 38-67; column 13, lines 25-28).

Kinney does not disclose where parameters for determining a second bid include the identity of the first bidder. However, Miller discloses where parameters for determining a second bid include the identity of the first bidder (page 157-160). It would be obvious to one of ordinary skill in the art to adapt the use of an identity parameter as disclosed by Miller with bid adjustment parameters as disclosed by Kinney. The motivation would be that participants' desire to adjust their bids based on other bid participants and their presence in an auction. As this is an old and well known practice, automating this method through use of the bid transformation functions as disclosed by Kinney would be obvious to one of ordinary skill in the art. Manual adjustment of bids based on the

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presence, or lack thereof, of other participants is a well known practice and integrating this factor into and amongst the various factors as provided by Kinney would be an obvious automation of a manual method. *In re Venner*, 262 F.2d 91, 95, 1209 USPQ 193, 194 (CCPA 1958).

Regarding claims 8-16, the rejection as set forth above for claims 1-7 applies to claims 8-16. Kinney discloses multiple bidders and wherein the bids for the various bidders are affected by the bids of the other participating bidders (Figures 1, 5A-5B, 7; column 4, lines 37-45; column 11, lines 30-32; column 12, lines 38-67; columns 13-14). Similarly, Miller discloses multiple participants wherein the consideration of each of the participants is considered (page 157-160). It would further be obvious that while any number of participants can be considered, participants can also be ignored. Again referring to the manual process of attendants at an auction, participants will pay attention to the presence and actions of certain other participants, and ignore the presence and actions of other participants, placing bids accordingly and basing the bid value on others' bids. Programming an automated device to perform this old and well known manual processes would be obvious to one of ordinary skill in the art when developing the multi-function transformation program as disclosed by Kinney and the means of considering other participants as disclosed by Miller and as is well known in the art where the transformation function can generate a bid which is equal to, above, below, an average, or any other programmable mathematical function.

***Response to Arguments***

Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication should be directed to Jennifer Liversedge whose telephone number is 571-272-3167. The examiner can normally be reached on Monday – Friday, 8:30 – 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached at 571-272-6777. The fax number for the organization where the application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jennifer Liversedge

Examiner

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RICHARD E. CHILCOT, JR.  
SUPERVISOR BY PATENT EXAMINER